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No. 93-880

IN THE

Supreme Court of the United States

October Term, 1993

JUDY MADSEN,

Petitioner,

v.

WOMEN'S HEALTH CENTER,

Respondent.

On Writ of Certiorari to the Supreme Court of Florida

BRIEF OF THE STATES OF FLORIDA, ARIZONA, COLORADO, CONNECTICUT, HAWAII, ILLINOIS, INDIANA, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, MONTANA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OHIO, OREGON, RHODE ISLAND, TENNESSEE, TEXAS, VERMONT, WEST VIRGINIA AND WISCONSIN AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

Page

INTEREST OF THE AMICI CURIAE 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 8

ARGUMENT 9

I. THIS CASE INVOLVES THE EXERCISE OF TRADITIONAL JUDICIAL POWER TO FASHION INJUNCTIVE REMEDIES THAT RESPOND TO SPECIFIC CIRCUMSTANCES ADJUDICATED BEFORE THE COURT. 10

A. The Courts Have Frequently And Traditionally Exercised Their Broad Equitable Powers To Prevent Or Minimize Continuing Disruption of Legitimate Public Activities At Particular Sites, Such As Medical Facilities, Businesses, Schools, And Courts. 10

II. THE EXERCISE OF TRADITIONAL JUDICIAL POWER TO GRANT INJUNCTIVE RELIEF IN AN APPROPRIATE CASE DOES NOT CONSTITUTE A "LEGISLATIVE" RESTRICTION AND IS NOT "VIEWPOINT-BASED," EVEN IF IT RESTRICTS SPEECH BY PARTIES SUBJECT TO THE INJUNCTION. 16

A. The Injunction is Not a Statute. 16

B. The Injunction Is Not Content- Or Viewpoint-Based. 17

C. The Injunction is Not Overbroad. 19

D. The Injunction Affords Petitioners Ample

Alternative Means to Express Their View Near the Clinic. 20

E. The Injunction Is Not a Prior Restraint. 21

F. The Injunction Provides Adequate Notice to Petitioners of the Conduct Prohibited. 22

III. THE INJUNCTION IS NARROWLY TAILORED TO PROTECT SIGNIFICANT STATE INTERESTS THREATENED BY THE CONDUCT OF PETITIONERS. 24

A. Each Prohibition of the Injunction Is No Broader Than Necessary to Protect The Significant State Interest At Stake. 25

1. Petitioners Concede The Prohibitions on Trespassing or Blocking Access Are Narrowly Tailored To Ensure Access to Public Services. 25

2. The 36-Foot Buffer Zone Is Narrowly Tailored to the Need for Traffic and Crowd Control. . . . 26

3. The Prohibitions on Noise That Disrupts Surgical Procedures and on Harassing Patients and Clinic Staff Ensure Safe Medical Procedures. 27

4. The Prohibitions on Demonstrating In Front of Doctors' Homes or Harassing Their Families Protect Property and Privacy Rights. 29

CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES:

Alexander v. United States, 113 S. Ct. 2766 (1993) 21, 22

Anderson v. Dunn, 19 U.S. 204 (1821) 13

Bagwell v. International Union, United Mine Workers, 244 Va. 463, 423 S.E. 2d 349 (1992), *cert. granted*, 113 S. Ct. 2439 (1993) No. 92-1625) 11

Bering v. Share, 106 Wash. 2d 212, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050 (1987) 14, 20, 28

Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753 (1993) 24

Burson v. Freeman, 112 S. Ct. 1846 (1992) 13, 27

Cameron v. Johnson, 390 U.S. 611 (1968) 13, 25, 26

Carey v. Brown, 447 U.S. 455 (1980) 29, 30

Carpenters' Local No. 33 v. NLRB, 873 F.2d 316 (D.C. Cir. 1989) 13

Carroll v. Presidents & Comm'rs of Princess Anne, 393 U.S. 175 (1968) 22

Cheffer v. McGregor, 6 F.3d 705 (11th Cir. 1993) 7, 16, 17

Connally v. General Constr. Co.,
269 U.S. 385 (1926) 23

Cox v. Louisiana,
379 U.S. 559 (1965) 13, 25

D.C. Court of Appeals v. Feldman,
460 U.S. 462 (1983) 7

Eanes v. State, 318 Md. 436,
569 A.2d 604, *cert. denied*,
110 S. Ct. 3218 (1990) 28

Freedman v. Maryland,
380 U.S. 51 (1965) 22

Frisby v. Schultz,
487 U.S. 474 (1988) 29

Grayned v. City of Rockford,
408 U.S. 104 (1972) . . . . . passim

Gregory v. Chicago,
394 U.S. 111 (1969) 24, 30

Heffron v. International Soc'y for Krishna Consciousness,
452 U.S. 640 (1981) 20, 26

Hirsh v. City of Atlanta,
261 Ga. 22, 401 S.E.2d 530,
cert. denied, 112 S. Ct. 75 (1991) 14

In re Baldwin-United Corp.,
770 F.2d 328 (2d Cir. 1985) 23

In re McDonald,
489 U.S. 180 (1989) 15

In re Sassower,
114 S. Ct. 2 (1993) 15

Lewis v. Pearson Found.,
908 F. 2d 318 (8th Cir. 1990) 28

Medlin v. Palmer,
874 F.2d 1085 (5th Cir. 1989) 14, 24, 28

Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.,
312 U.S. 287 (1941) . . . . . passim

NAACP v. Claiborne Hardware, Co.,
458 U.S. 886 (1982) 11

New York Times Co. v. United States,
403 U.S. 713 (1971) 21

NLRB v. Baptist Hospital,
442 U.S. 773 (1979) 28

Northeast Women's Center, Inc. v. McMonagle,
939 F.2d 57 (3d Cir. 1991) . . . . . passim

Organization for a Better Austin v. Keefe,
402 U.S. 415 (1971) 11, 21

Parkmed Co. v. Pro-life Counselling, Inc.
91 A.D. 2d 551, 457 N.Y.S. 2d 27 (1982) 20

People v. Smith,
392 N.Y.S.2d 968, *cert. denied*,
434 U.S. 920 (1977) 15

Pickens v. Okolona Mun. Separate Sch. Dist., 594 F.2d 433
(5th Cir. 1979) 13, 18

Planned Parenthood v. Casey,
112 S. Ct. 2791 (1992) 15

Planned Parenthood v. Operation Rescue,
406 Mass. 701,
550 N.E.2d 1361 (1990) 14, 28

Planned Parenthood v. Project Jericho,
52 Ohio St. 3d 56,
556 N.E.2d 157 (1990) 26

Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.,
859 F.2d 681 (9th Cir. 1988) . . . . . passim

Regal Knitwear v. NLRB,
324 U.S. 9 (1945) 18, 19

Renegotiation Bd. v. Bannercraft Clothing Co.,
415 U.S. 1 (1974) 10

Resident Advisory Bd. v. Rizzo,
503 F. Supp. 383 (E.D. Pa. 1980) 14

Roe v. Wade,
410 U.S. 113 (1973) 28, 29

Rooker v. Fidelity Trust Co.,
263 U.S. 413 (1923) 7

Sassower v. Abrams,
833 F. Supp. 253 (S.D.N.Y. 1993) 15

Shuttlesworth v. City of Birmingham,
394 U.S. 147 (1969) 22

Smith v. Goguen,
415 U.S. 566 (1974) 23

Spallone v. United States,
493 U.S. 265 (1990) 11

Thompson v. Police Dept. of New York,
145 Misc. 2d 417, 546 N.Y.S. 2d 945 (1989) 26

United States v. Dixon,
113 S. Ct. 2849 (1993) 15

United States v. Gilbert,
813 F.2d 1523 (9th Cir. 1987)
cert. denied, 484 U.S. 860 (1987) 10

United States v. Hall,
472 F.2d 261 (5th Cir. 1972) 13

United States v. O'Brien,
391 U.S. 367 (1968) 10

United States v. United Mine Workers,
330 U.S. 258 (1947) 11

Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658 (1979) 18

Wisconsin v. Mitchell,
113 S. Ct. 2194 (1993) 10, 29

Young v. American Mini Theatres, Inc.,
427 U.S. 50 (1976) 21

STATUTES AND LEGISLATIVE MATERIALS:

Fla Stat. §§ 447.09 (12), (13);
447.17 (2) (1993) 14

Iowa Stat. § 732.5 (1993) 14

N. M. Stat. § 50-2-2 (1993) 14

Va. Stat. § 40.1-83 (1993) 14

MISCELLANEOUS:

Fed. R. Civ. P. 65 . . . . . 5, 18

Fla. R. Civ. P. 1.610(c) 5, 18

Landwehr, Unfriendly Persuasion:
Enjoining Residential Picketing,
43 Duke L.J. 148 (1993) 30

INTEREST OF THE AMICI CURIAE

The *amici* states seek this Court's affirmance of the ruling of the Florida Supreme Court in this case, upholding the amended permanent injunction entered by the trial court on April 8, 1993. This case presents an important vehicle for this Court to uphold the well-established role of state courts to fashion appropriate injunctive relief to deal with specific controversies and threats to public order and safety in their jurisdiction. This court's decision will directly affect the states' ability to avoid disruption of legitimate public services and activities that occur at particular sites, such as medical facilities, voting booths, schools and courts. Resolution of the issues presented will also affect the ability of state governments to promote public health by ensuring citizens access to health care, to ensure public safety by maintaining the free flow of traffic on public streets and sidewalks, to protect the property rights of state citizens, and to protect the state and federal constitutional rights of all state citizens, including a woman's freedom to seek lawful medical or counseling services in connection with pregnancy.

The *amici* states strongly urge this Court to uphold the trial court's measured response in the instant matter, which recognized not only petitioners' constitutional rights, but the significant state interests involved.

STATEMENT OF THE CASE

The April 8, 1993 injunction challenged by petitioners was the third injunction entered by the state trial court in Melbourne, Florida in a suit brought in October 1991 by the Aware Woman Center for Choice (hereinafter "clinic") seeking relief from the activities of petitioners and others who were blocking clinic access and threatening clinic staff and patients as part of a plan to force the closure of clinics performing abortions in the Central Florida area. Each of these remedies was issued only after the court reviewed evidence and made

detailed findings of fact supporting the necessity for the particular relief granted. As the April 8, 1993 injunction itself states, it was issued in response to the refusal of petitioners to abide by the terms of the previous injunction and in response to escalating illegal and threatening actions by petitioners and their associates at the clinic and at the homes of clinic staff and patients.

The First Permanent Injunction

The clinic filed suit in state court October 24, 1991, seeking immediate relief from the activities of petitioners and their associates who were blocking clinic access as part of an announced plan to close abortion clinics in Central Florida. Finding that the situation required prompt relief, the trial court entered a temporary injunction on October 25, 1991. Petitioners moved to dissolve that order and the clinic requested permanent relief. Based on stipulated facts and affidavits submitted by the parties, the trial court entered a permanent injunction on September 30, 1992. J.A. 1.

Petitioners did not then and do not now challenge the findings of fact or prohibitions imposed by the September 1992 injunction. Pet. at 5, n.4. The trial court found that Madsen, Martin and Hobbs are members of Operation Rescue and Operation Rescue America, J.A. 6, and that they had stated an intent to close clinics performing abortions in Central Florida by blocking access in intentional violation of state law. J.A. 5-7, ¶ 2, 5, 7, 8.[1] The court ruled that state criminal prosecution would not adequately protect the civil and property rights of the clinic, its staff, and its patients, J.A. 7-9, and that

[1] The parties' stipulation, submitted July 30, 1992, states, among other things, that "Ed Martin, Judy Madsen and Shirley Hobbs are members of Operation Rescue America," and that "[r]espondents have passed out flyers in the [Melbourne] area stating their desire to close down abortion clinics in this area . . . ." Pet. App. A 2-3, n.2.

an injunction was both necessary and appropriate. *Id.* The court prohibited petitioners from blocking access to clinics or physically abusing persons entering or leaving the clinics, and from directing others to do so. J.A. 7-10. Petitioners do not challenge those conclusions of law or those prohibitions, which are also contained in the amended permanent injunction at issue. Pet'rs Br. at 27 n.19, 28-30.[2]

The Amended Permanent Injunction

On March 22, 1993, the clinic moved to present additional evidence and to modify the injunction, arguing that the September 30, 1992 injunction had not proved sufficient and that petitioners were violating its proscriptions. J.A. 11-49. The clinic alleged that the petitioners' actions had become more menacing since the murder of Dr. David Gunn near an abortion clinic by an anti-abortion activist in Pensacola, Florida on March 11, 1993. J.A. 11-12.[3] The trial court held a three-day evidentiary hearing at which clinic medical staff, local police, and petitioner Martin, among others, testified. As set out below, the testimony of the clinic staff and police established that after the September 30, 1992 injunction, petitioners Martin and Hobbs and other demonstrators organized by Rescue America, had blocked access to the clinic

[2] Despite paragraphs two and four of petitioners' July 30, 1992 stipulation, and paragraphs two and four of the fact findings in the September 30, 1992, order entered against petitioners, petitioners represent to this Court that they are not associated with Operation Rescue. Pet'rs Br. at 3. In light of the *res judicata* effect of the September 30, 1992, order to which these individuals were party, this Court should summarily reject petitioners' assertions that they are not "in concert with" Operation Rescue or its successor, Operation Rescue America.

[3] The alleged new threats included blockading clinic doctors in their homes and tracing patients' license plates through the Department of Motor Vehicles to obtain their home addresses and contact them. J.A. 14, 15.

and otherwise harassed and threatened clinic staff and patients. The trial court entered detailed findings of fact describing the unlawful actions of petitioners and their associates.

Dr. Frank Snydle, who worked at the clinic until the activities of the protestors caused him to terminate his employment, testified that after issuance of the September 30, 1992 injunction, he had seen petitioners Martin and Hobbs, along with other protestors, trying to stop cars from entering the parking lot of the clinic, yelling at patients and medical staff, and attempting to push literature through closed windows of cars. J.A. 145-147, J.A. 192-194. Dr. Snydle recounted that after running this gauntlet, several patients exhibited physical manifestations of anxiety, including hypertension, cardiac arrhythmia, increased respiration, and fear. Dr. Snydle stated that he regularly had to turn away abortion patients because of the surgical risk occasioned by these symptoms of anxiety, which in his medical opinion, were caused by the protestors. He witnessed some patients being turned away from the clinic by the protesters' blockading, screaming and other harassing conduct, and he stated that the risk associated with surgical procedures increased with delay. Dr. Snydle noted that the protestors' blockage would make entry for an emergency vehicle very difficult. J.A. 150-56.

Dr. Snydle stated that he personally had been harassed by petitioner Martin and others. J.A. 156. In February 1993, Dr. Snydle had been physically prevented from leaving his hotel near the clinic to go to work there for half an hour. Dr. Snydle feared for his physical safety during this blockade. J.A. 179.[4] The trial court entered detailed findings of fact crediting Dr. Snydle's testimony on these points. J.A. 53-55.

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[4] Dr. Syndle also testified that after the first permanent injunction, Meredith Raney, another leader of Operation Rescue, followed him by car from the clinic. When Dr. Snydle pulled off the highway, Mr. Raney parked beside him, grinned at him, made a gun hand symbol, and drove away. J.A. 190.

Captain Allgeyer of the Melbourne Police Department testified that, since the September 1992 injunction, systematic anti-abortion protesting ("impact training") organized by Operation Rescue, J.A. 247, and petitioners Madsen and Martin, J.A. 415-16, *see* J.A. 108, 109, had considerably increased the crowds blocking access to the clinics and that the incidence of police reports involving anti-abortion protesters had increased. J.A. 267-68. Captain Allgeyer testified that he had charged petitioner Hobbs with obstructing traffic and blocking clinic access several times. J.A. 275-76. Allgeyer stated that the number of protestors was creating a traffic problem frequently requiring police presence to ensure that emergency vehicles could reach the clinic and to protect pedestrians and motorists. J.A. 259, 263-64. The trial court entered detailed findings of fact crediting Captain Allgeyer's testimony. J.A. 50-52.

The trial court found that in violation of the September 30, 1992 injunction, petitioners and their associates were blocking access to the clinic, and physically abusing and threatening persons seeking access to the clinic. The court found that the noise made by petitioners and their associates was interfering with medical procedures at the clinic and endangering patient care. The court further found that petitioners and their associates were stalking clinic staff and harassing them and their families at their homes. J.A. 55-56.

Having found that the prohibitions of the September 30, 1992 injunction were insufficient, the trial court amended the injunction to prohibit petitioners and those "acting in concert" with them with notice of the injunction[5] from trespassing on clinic property, blocking clinic access, demonstrating within 36 feet of the clinic property on three sides, making noise that

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[5] As discussed below, the amended permanent injunction tracks the language of Fla. R. Civ. P. 1.610(c), which is modeled on Fed. R. Civ. P. 65, in making the injunction binding on those "acting in concert" with the named parties so long as they have notice.

could be heard in the clinic during surgery times as defined in the order, making uninvited contact with persons seeking access to the clinic within a 300 foot zone around the clinic, demonstrating within 300 feet of the homes of clinic staff or threatening clinic staff. The order also contains notice and penalty provisions, and further defines invited contact. J.A. 50-64.

The amended permanent injunction expressly reiterates petitioners' freedom to exercise their First Amendment rights subject to the restrictions. Indeed, the order specifically notes certain areas near the clinic, including a large area five feet from clinic property, where respondents are to be allowed to demonstrate, and requests the city to define a crosswalk to assist petitioners and their associates to reach that area. J.A. 57-58,62.

The Florida Supreme Court and Eleventh Circuit Decisions

On appeal, the Fifth District Court of Appeals certified the trial court's order to the Florida Supreme Court, J.A. 3, and the Florida Supreme Court upheld the injunction. The court reviewed the record and found that the trial court's factual findings were supported by competent and substantial evidence. The Florida high court held that the restrictions were narrowly tailored to address the specific abuses, that the restrictive language of the injunction was content-neutral, that the state had significant governmental interests at stake, that the injunction left open ample alternative means of communication and that the doctrine of prior restraint did not apply. The court also found that the restrictions were not unconstitutionally vague as they were sufficiently specific to put petitioners on notice of the prohibitions, and were fashioned to address specific abuses. Pet. App. A. Madsen, Martin and Hobbs then sought review in this Court.

On April 13, 1993 (five days after issuance of the amended permanent injunction by the state trial court in this

case), Myrna Cheffer filed suit in the United States District Court for the Middle District of Florida challenging the constitutionality of the April 8, 1993 injunction and seeking to enjoin its enforcement. The federal trial court denied Cheffer's motion for injunctive relief and Cheffer appealed. The state moved to dismiss or to affirm for lack of subject matter jurisdiction in light of this Court's decisions in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), which hold that the lower federal courts have no jurisdiction to review state court decisions, even where those decisions are challenged as unconstitutional. On October 20, 1993, just eight days before the Florida Supreme Court issued its opinion in the state case, the Eleventh Circuit vacated the district court's order and remanded with instructions to consider issuance of a preliminary injunction. *Cheffer v. McGregor*, 6 F.3d 705 (11th Cir. 1993).[6]

The Eleventh Circuit panel held that the injunction is "in effect" a statute -- a conclusory transformation that enabled the court to find standing for Cheffer to challenge the injunction without even alleging that it applied to her, and to find the injunction impermissably viewpoint-based because it does not apply to the world at large. *Id.* As Judge Payne pointed out in dissent, "The majority's unprecedented decision to assume an impossibility -- that a state court judge has passed legislation -- skews its analysis." *Id. at* 714.

SUMMARY OF ARGUMENT

The issues raised in this case stem from the exercise of traditional judicial power to fashion injunctive remedies that respond to specific conditions and circumstances adjudicated

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[6] A week later the Eleventh Circuit summarily denied the state's motion to dismiss. The state's motion for rehearing en banc is still pending.

before the trial court. The trial court's exercise of that power was appropriately fashioned as a patient and incremental response to an escalating pattern of harassing and intimidating conduct accompanying the demonstrations organized by petitioners. As this Court has recognized, the courts have broad remedial power to fashion specific relief in an individual case, based on the evidence submitted and testimony given about the particular circumstances of the claims raised, despite the fact that the relief imposed often has an incidental or even a direct effect upon conduct that has some expressive value. In particular, courts have frequently exercised this accepted power to regulate demonstrations that threaten a continuing disruption of legitimate public services and activities at particular sites, such as schools, medical facilities, courts, voting booths, businesses, and other such facilities. Such power was properly exercised here.

The exercise of traditional judicial power to grant injunctive relief in an appropriate case against conduct that has occurred and is occurring does not constitute a prior restraint upon speech. Nor does it constitute a "legislative" imposition, even if it has incidental effects on the speech or association rights of parties subject to the injunction. Thus, the "overbreadth" arguments asserted by petitioners as though the injunction were a statute or ordinance are fundamentally misplaced. In addition, the trial court's injunctive orders in this case are not framed as "content-based" or "viewpoint-based" directives. Nor are they transformed into "content-based or "viewpoint-based" orders merely because, as injunctive orders entered in a particular case, they are addressed only against those parties whose conduct has been adjudicated in this lawsuit and who have been judged on the evidence presented to be the appropriate objects of injunctive relief.

The Florida Supreme Court correctly held that each restriction of the injunction is necessary to counteract a specific threat to a significant state interest. The trial court

found, and the state high court affirmed, that petitioners' actions and those of their associates threatened the safety of the medical procedures performed at the clinic, prevented patients, clinic staff, and emergency vehicles from access to the clinic, and threatened the safety and privacy of clinic staff and patients in their homes. The state has an unquestionable interest in protecting safe medical services, access to public medical services, and the safety and privacy of citizens in their homes. The injunction's restrictions are, as the state high court found, "no broader then necessary to restrain the unlawful conduct" endangering these interests.

ARGUMENT

As an injunction, the trial court's order restrained only those whose conduct was shown to require restraint. Its case-specific scope does not render it content-based, any more than an injunction against similarly unlawful conduct by "pro-choice," civil rights, union, or any other category of demonstrators would be. And as an injunction, the trial court's order was not "overbroad" just because it was directed at specific persons and groups shown to have acted unlawfully and those acting in concert with them. The *only* question here is whether the injunction was an appropriate response to an escalating pattern of harassing and intimidating conduct accompanying the demonstrations organized by petitioners. Because the trial court's findings of fact show that the injunction is narrowly tailored to protect significant state interests endangered by the actions of petitioners, the injunction should be upheld.

I. THIS CASE INVOLVES THE EXERCISE OF TRADITIONAL JUDICIAL POWER TO FASHION INJUNCTIVE REMEDIES THAT RESPOND TO SPECIFIC CIRCUMSTANCES ADJUDICATED BEFORE THE COURT.

A. The Courts Have Frequently And Traditionally Exercised Their Broad Equitable Powers To Prevent Or Minimize Continuing Disruption of Legitimate Public Activities At Particular Sites, Such As Medical Facilities, Businesses, Schools, And Courts.

It is broadly accepted that when the government acts to restrain harmful conduct, it has the authority to do so despite any incidental or even direct impact on First Amendment rights. *See, e.g., Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993) (hate crimes); *United States v. O'Brien*, 391 U.S. 367 (1968) (burning draft card); *United States v. Gilbert*, 813 F.2d 1523 (9th Cir.), *cert. denied*, 484 U.S. 860 (1987) (harassment with intent to intimidate). In particular, it is well-recognized that courts acting in equity have broad traditional powers to fashion specific relief in response to existing circumstances that have been adjudicated before the court. *See, e.g., Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 294 (1941); *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1 (1974). As the Florida Supreme Court accurately observed in this case, if the threshold requirements for an injunction are met, "the court has wide discretion in fashioning an appropriate remedy,"[7]

[7] The broad and accepted scope of the equitable power to fashion an appropriate injunctive response to specific circumstances is clearly seen by comparing it to the narrower and more sensitive power of the courts to enforce judicial orders by contempt sanctions. Although this Court has cautioned that the contempt powers should be wielded in such a manner as to invoke "the least possible power adequate to the end proposed," *Spallone v. United States*, 493 U.S. 265, 276 (1990) (quotation omitted), and the outer limits of such powers are subject to some controversy, *see Bagwell v. International Union, United Mine Workers*, 244 Va. 463, 423 S.E. 2d 349 (1992), *cert. granted*, 113 S. Ct. 2439 (1993) (No. 92-1625), even the undisputed parameters of such powers are clearly formidable. *See Spallone*, 493 U.S. at 277-78; *United States v. United Mine Workers*, 330 U.S. 258 (1947). A fortiori, the more basic power to fashion injunctive relief appropriate to govern a particular factual situation involving private parties is properly afforded considerable deference as a traditional power of the courts. *See, e.g., Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941).

subject to the constraint that the injunction must be "carefully tailored to remedy only the specific harms shown." Pet. App. A-11; *see Meadowmoor*, 312 U.S. at 298 ("An injunction so adjusted to a particular situation is in accord with the settled practice of equity. . . .")

The relative paucity of cases from this Court involving First Amendment challenges to injunctive relief suggests the accepted broad scope of the lower courts' discretion in fashioning such relief based on particular findings of fact. The few cases from this Court that involve First Amendment challenges to injunctive relief are extreme cases: they involve facts far more egregious, and injunctions far more sweeping, than this case presents. *Compare Meadowmoor*, 312 U.S. 287 (upholding injunction barring all picketing in the state by a labor union in response to extensive violence) *with Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) (vacating injunction that prohibited all leafletting by a particular group before it had even occurred).[8]

[8] Petitioners rely on *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 924 (1982), in which this Court vacated an award against the NAACP and named persons for all business losses sustained by certain merchants during a largely peaceful seven-year boycott. This Court held the damages award was irrational and an abuse of discretion ("screens reality") because the trial court failed to attribute any portion of that loss to voluntary action

The broad equitable powers of the courts have frequently been invoked to control expressive conduct when necessary to prevent or minimize any continuing disruption of legitimate public services and activities at particular sites. This Court has emphasized that even in the context of a public forum, the proper analysis of government restraints on allegedly expressive conduct examines the effects of the particular expressive conduct at issue on the public activities typically occurrng at that location. "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time". *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972) Accordingly, in reviewing demonstrations at schools, protests at government facilities, labor disputes, and picketing against medical facilities such as occurred in this case, the Court has repeatedly indicated that the traditional injunctive powers of the courts can properly be exercised to ensure that the ordinary and legitimate activities that occur at these locations will not be significantly disrupted by expressive conduct that the court finds disruptive of such activities.

In *Grayned*, for example, this Court upheld a criminal ordinance that prohibited all picketing or other demonstrations within 150 feet of a school building during school hours, even though it concededly prohibited "some picketing that is neither violent nor physically obstructive." 408 U.S. at 120. Since *Grayned*, courts have regularly granted injunctions that bar such activities within a buffer zone around a school building to prevent disruption of school activities during school hours.

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in response to peaceful picketing. *Id.* at 924. The trial court also had granted an injunction against those engaged in the boycott, but the propriety of that injunction was not at issue before this Court, *id.* at 893-96 and n. 18, and thus was addressed only in passing. For this reason, the case is not authority on the issue of what limits the First Amendment imposes on the broad equitable powers of a court to fashion injunctive relief in response to specific circumstances adjudicated before the court.

See, e.g., Pickens v. Okolona Mun. Separate Sch. Dist., 594 F.2d 433, 437 (5th Cir. 1979) (upholding one-block buffer zone around school). Such orders are entirely appropriate when entered in response to specific conditions adjudicated before the court. In some cases, courts have found it necessary to protect school premises by punishing nonparties to an injunction in contempt proceedings where those persons violated injunctions designed to protect schoolchildren's access to class by insulating the school premises against outside agitation. *United States v. Hall*, 472 F.2d 261 (5th Cir. 1972). In judging whether any such further steps are "the least possible power adequate to the end proposed," *Anderson v. Dunn*, 19 U.S. 204, (1821), there is little doubt that the trial judge is best situated to determine the exigencies at hand.

Courts have also frequently been called upon to use their power to protect government facilities against disruptive protest activities on or about their premises. In *Cox v. Louisiana*, 379 U.S. 559 (1965), this Court relied on "the special nature of the place" to uphold limitations on picketing in or near a courthouse. *Grayned*, 408 U.S. at 120. In *Cameron v. Johnson*, 390 U.S. 611 (1968), this Court upheld limitations on picketing that was conducted in such a manner as to obstruct or reasonably interfere with free ingress or egress to a courthouse. And in *Burson v. Freeman*, 112 S. Ct. 1846 (1992), this Court upheld a statute prohibiting political speech within 100 feet of the entrance to a polling place, relying on the states' widespread and long-standing experience that some restricted zone around polling places is necessary to protect the right to vote free of intimidation and fraud.

In labor disputes, it is common for courts to intervene where striking workers are engaged in picketing and patrolling the premises at their worksite. *See, e.g. Carpenters' Local No. 33 v. NLRB*, 873 F.2d 316 (D.C. Cir. 1989). In many states, the exercise of such equitable power in labor disputes has been sanctioned by legislation specifying that peace orders can be imposed in labor disputes involving picketing and

patrolling. *See, e.g.*, Fla Stat. §§ 447.09 (12), (13); 447.17 (2) (1993); Iowa Stat. § 732.5 (1993); N. M. Stat. § 50-2-2 (1993); Va. Stat. § 40.1-83 (1993). In nonlabor disputes, also, courts have enjoined demonstrations and similar activities from disrupting legitimate business activities. *See, e.g.*, *Resident Advisory Bd. v. Rizzo*, 503 F. Supp. 383 (E.D. Pa. 1980) (buffer zone granted that barred picketing and demonstrations in specified areas around site where townhouses were being constructed to prevent disruption).

Cases that involve injunctive orders aimed at protecting public services provided at medical facilities are nothing more than standard applications of the same approach. The lower federal courts have routinely upheld injunctions designed to protect the integrity of medical services at clinics such as this one. *See, e.g., Northeast Women's Center, Inc. v. McMonagle*, 939 F.2d 57 (3d Cir. 1991) (500-foot buffer zone around clinic); *Medlin v. Palmer*, 874 F.2d 1085 (5th Cir. 1989) (restricting activities within 150 feet of clinic); *Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.*, 859 F.2d 681 (9th Cir. 1988) (limitation on picketing outside clinic).[9] These cases do not present isolated examples of rogue judges entering orders insensitive to constitutional rights; to the contrary, they follow a long line of cases in which state and federal courts have carefully crafted relief appropriate to the particular facts to protect schools, government, courts or other important public facilities from recurring instances of harassing and intimidating conduct accompanying demonstrations. Where such harassing and intimidating conduct is repeated and intransigent, as in this case, an effective judicial response is

[9] *See also* Pet. App. A-24; *Hirsh v. City of Atlanta*, 261 Ga. 22, 401 S.E.2d 530, (demonstrations restricted outside clinic); *cert. denied*, 112 S. Ct. 75 (1991) *Planned Parenthood v. Operation Rescue*, 406 Mass. 701 550 N.E.2d 1361 (1990) (same); *Bering v. Share*, 721 P.2d 918 (Wash. 1986), *cert. dismissed*, 479 U.S. 1050 (1987) (same).

clearly warranted.[10]

In this case, acts that constituted intimidation, harassment, physical abuse, and threats of violence were repeatedly documented by the trial court in granting not one, not two, but three separate injunctions after full judicial hearings on the facts of this case. Such acts, even if they accompanied expressive conduct, were entirely incompatible with the central purpose of this facility, which is to provide medical services, and in particular abortion services, to patients who seek such services. It was thus appropriate for the trial court, confronted by these continuing disruptive actions, to grant successively broader injunctions designed to meet the problems presented as directly and efficiently as possible.[11] The equitable orders granted here did so, and were therefore proper.

[10] Repeated expressive conduct, in itself, often is judged by the courts to constitute harassment properly subject to restriction. *See, e.g.*, *In re Sassower*, 114 S. Ct. 2 (1993) (per curiam) (repeated legal filings may be enjoined); *In re McDonald*, 489 U.S. 180 (1989) (per curiam) (same); *Sassower v. Abrams*, 833 F. Supp. 253 (S.D.N.Y. 1993) (injunction granted to allow other federal courts summarily to dismiss lawsuits filed involving specified subject matter). Similarly, courts routinely grant restraining orders, enforceable in criminal contempt proceedings, that direct one party not to annoy or disturb another or to approach within a specified distance of the other party's residence or workplace. *See, e.g., United States v. Dixon*, 113 S. Ct. 2849, 2854-55 (1993). *See also People v. Smith*, 392 N.Y.S.2d 968, (telephone harassment not protected by First Amendment) *cert. denied*, 434 U.S. 920 (1977).

[11] Conversely, if a court or government entity were to refuse to accord this traditional protection to legitimate activities such as the provision of medical and abortion services at these clinics, the clinics could argue that the government is unconstitutionally sanctioning conduct that creates an "undue burden" on the right to obtain an abortion, as explicitly discussed in this Court's recent decisions. *See Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2821 (1992) (plurality opinion).

II. THE EXERCISE OF TRADITIONAL JUDICIAL POWER TO GRANT INJUNCTIVE RELIEF IN AN APPROPRIATE CASE DOES NOT CONSTITUTE A "LEGISLATIVE" RESTRICTION AND IS NOT "VIEWPOINT-BASED," EVEN IF IT RESTRICTS SPEECH BY PARTIES SUBJECT TO THE INJUNCTION.

A. The Injunction is Not a Statute.

The Florida Supreme Court properly treated the third injunction granted in this case as a fairly standard order fashioning an equitable remedy to control proven disruptive conduct, on the basis of extensive findings of fact. Nonetheless, the Eleventh Circuit, reviewing the third injunction granted in this case, declared that the trial judge "in effect, created a criminal statute prohibiting `pro-life' free speech activity" at this medical facility. *Cheffer*, 6 F.3d at 708. The Court of Appeals proceeded to analyze this third injunction as if it were a criminal statute. *Id.* at 708, 712. That approach -- which petitioners adopt in this case -- is in error and skews petitioners' analysis.

Unlike a statute, which can be challenged "on its face," an injunction is by definition "as applied"; it *is* the application of law to specific facts proven in a particular case. Indeed, any "as applied" analysis occurs upon the issuance of an injunction, when the trial court adjudicates the underlying facts and determines the appropriate remedy. The only question on review is whether the equitable remedy fashioned by the trial court fits the facts of the case. As the Florida Supreme Court correctly noted, the fact-sensitive nature of this task demands that the trial court's on-the-spot resolution of this issue be afforded deference by reviewing courts. Pet. App. A-11; *Meadowmoor*, 312 U.S. at 294.

B. The Injunction Is Not Content- Or Viewpoint-Based.

The injunctive orders issued by the trial court in this case have nothing to do with the content of any speech or expression. They are directed instead at the particular actions engaged in by petitioners and their associates in the immediate vicinity of this medical facility that created a risk to public health and safety. The conduct prohibited by the amended permanent injunction includes entering the clinic premises; blocking or interfering with access to these medical facilities and similar conduct at the homes of clinic staff or patients; blocking and crowding in the street and sidewalk approaching the clinic; and harassment, intimidation, and physical abuse directed at patients or clinic staff, particularly at their homes and places of work. The injunction restricts this harmful and disruptive conduct without reference to the content or viewpoint being advanced.

As the Florida Supreme Court properly reasoned, these orders cannot be characterized as "content-based," let alone as "viewpoint-based." Pet. App. A-14-15. To state the obvious, "[i]t is true that this injunction applies only to [the persons named therein], but that is because it is only those persons who the Center has proved have created and are continuing to create a threat of violence and intimidation." *McMonagle*, 939 F.2d at 63. The petitioners argue that the injunction is content-based because it enjoins the harmful conduct of certain persons who hold a particular view on abortion. *See Cheffer*, 6 F.3d at 710-11. *Contra*, *Portland Feminist Women's Health Center*, 859 F.2d at 686; *McMonagle*, 939 F.2d at 63. The fundamental error in petitioners' and the Eleventh Circuit's analysis is, again, that they treat the injunction like a statute. A statute barring only petitioners from the buffer zone might well be susceptible to constitutional challenge as content-based. But the instant injunction properly confines its prohibitions to those before the court whose conduct required restraint, and

cannot be attacked as content- or viewpoint-based simply because no persons holding different views were shown in this action to have violated the law. Similar complaints raised in other cases under the Equal Protection Clause have been soundly rejected. *See, e.g., Pickens*, 594 F.2d at 438.

Petitioners argue that the injunction's extension of its prohibitions to persons acting in concert with the named parties, with notice of the injunction, renders it viewpoint-based. But it is commonplace for injunctive orders, following the explicit authority of the applicable rule, to restrain not only parties but also "those persons in active concert or participation with them who receive actual notice of the order." Fed. R. Civ. P. 65; Fla. R. Civ. P. 1.610(c); *cf. Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 693 n.32 (1979). The rule allows courts to extend the injunction to persons 'acting in concert" with notice to preserve the common law doctrine that "defendants may not nullify a decree by carrying out prohibited acts through aides and abettors, even though they were not parties to the original proceeding." *Regal Knitwear v. NLRB*, 324 U.S. 9, 14 (1945). To say that such an order cannot be entered because it is "viewpoint-based" is to say that no striker picketing can ever be enjoined because management is not so enjoined. Any such suggestion is clearly wrong.[12]

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[12] Petitioners argue that the court's comments made at post-order, non-evidentiary, preliminary hearings which followed the arrests of 50 people who violated the injunction show that the court intended the injunction to apply to all those with pro-life beliefs. This hearing was not before the Florida Supreme Court and is not part of the record in this case. In any event, petitioners have lifted the comments out of context. A complete examination of the dialogue at the April 12, 1993, hearing shows that the trial court intended the injunction to apply only to those "in concert with" the named respondents, and that the trial court explained to the arrestees that the injunction would not apply to them if they were not "in concert with" the named parties. J.A. 68, 74 (excerpts only).

C. **The Injunction** is Not Overbroad.

Petitioners also argue, relying on *Cheffer*, that the injunction's application to those "acting in concert" with notice of its provisions renders it overbroad. Again, petitioners erroneously treat the injunction as a statute; but unlike a statute, an injunction is binding only on those within its scope. Application of this injunction to a pro-life protester not "acting in concert" with one of the named parties, as that term has been defined by the courts,[1] would exceed the authority of the injunction. Conversely, the mere fact that the injunction extends to those "acting in concert" with the named parties, as expressly authorized by the rule, does not render it overbroad. *See Regal Knitwear*, 324 U.S. at 13-14.

Moreover, the specific facts of this case clearly warranted the extension of the injunction's prohibitions to those "acting in concert" with Operation Rescue and Rescue America. The evidence showed that the unlawful activities at issue were organized by Operation Rescue. J.A. 247-51, 269-70. Thus, there was a specific danger proven in this case that the named defendants would "nullify [the injunction] by carrying out prohibited acts through aiders and abettors," *Regal Knitwear*, 324 U.S. at 14, unless prevented from doing so.[2]

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[1] *See, e.g. Portland Feminist Women's Health Center*, 859 F.2d at 687, (defining scope of "acting in concert"); *United States v. Hall*, 472 F.2d 261 (5th Cir. 1972) (same).

[2] Similarly, this evidence warranted the injunction's prohibition on petitioners' soliciting others to commit the prohibited acts.

D. The Injunction Affords Petitioners Ample Alternative Means to Express Their View Near the Clinic.

The injunction carefully respects the First Amendment rights of petitioners while protecting the significant state interests identified by the trial court. *See* pp. 24-30, *infra*. The injunction clearly reflects the trial court's conscientious balancing of petitioners' rights to express their views and to associate, against patients' rights to obtain, and the clinic's right to provide, necessary medical services. Moreover, as shown above, the injunction is similar to other injunction issued by trial courts in similar circumstances; its provisions do not stand out as extreme. *Compare McMonagle, supra, Portland Feminist Women's Health Center*, 859 F.2d at 681; *Bering v. Share*, 721 P.2d 918 (Wash. 1986); *Parkmed Co. v. Pro-Life Counselling, Inc.* 91 A.D. 2d 551, 457 N.Y.S. 2d 27 (A.D. 1982).

The injunction clearly states that petitioners may engage in First Amendment activities in the vicinity of the clinic. As the Florida Supreme Court noted,

> Operation Rescue is entirely free to do the following at any time on any day: place an unrestricted number of picketers along the south edge of Dixie Way and both the east and west edge of U.S. A; engage in singing, chanting, and whistling, as long as it cannot be heard inside the Clinic during the designated times; engage in "sidewalk counseling" of any Clinic patient who invites contact outside the five-foot and thirty-six-foot buffer zones; and picket in the neighborhoods of Clinic workers outside the three-hundred-foot buffer zone. Pet. App. A-19.

See also Heffron, 452 U.S. at 654-55; *Bering*, 721 P.2d at 930; *Medlin*, 874 F.2d at 1090.[15]

E. The Injunction Is Not a Prior Restraint.

As established in this Court's previous decisions, a "prior restraint" on speech is generally an absolute prohibition laid down on the basis of the content of the speech before the speech or publication may occur at all. *Alexander v. United States*, 113 S. Ct. 2766, 2771 (1993). Because they are imposed before the fact, are content-based, and do not provide adequate alternative means for communicating the ideas restrained, prior restraints are strongly disfavored in the law. *See, e.g., New York Times Co. v. United States*, 403 U.S. 713 (1971).

The instant injunction, however, does not suffer from these defects. Just as the post-hoc remedy accorded here cannot be analyzed as a legislative enactment, it also cannot be equated to a prior restraint; injunctions are remedies accorded after the fact, and, as the Florida Supreme Court correctly understood, "lie[ ] within the sound discretion of the trial court and will be affirmed absent a showing of abuse of discretion." Pet. App. A-11. *See Meadowmoor*, 312 U.S. at 294; *McMonagle*, 939 F.2d at 57.[16]

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[15] The express provision of a location five feet from the clinic for petitioners to demonstrate also undercuts any argument that the injunction improperly targets their viewpoint. As Justice Powell observed in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), if the trial court "had been concerned with restricting the message purveyed by the [protestors], it would have tried to [remove] them or restrict their number rather than circumscribe their choice as to location." Id. at 82 n.4.

[16] Petitioners argue that the Florida Supreme Court erred in adopting the reasoning of *McMonagle* on this point, but none of petitioners' authorities suggest any different analysis. The activities that were restricted here were not mere "peaceful pamphleteering" that created no disruptions or disturbances, as in *Organization for a Better Austin*, 402 U.S. at 417-19. They were found instead to include repeated instances of

All persons subject to the injunctions here were permitted to exercise their rights freely through their speech and their conduct at this medical facility, until a lawsuit was eventually brought to determine whether their particular conduct at that site constituted an abuse of those rights. After the trial court had heard evidence about the activities that had occurred, it determined that specific time, place and manner restrictions on those activities were necessary to protect persons and activities at this medical facility, and laid down such constraints in three successive injunctions, all imposed after the trial court had fully adjudicated the circumstances. This case thus presents the kind of "judicial determination in an adversary proceeding" that "suffices to impose a valid final restraint." *Freedman v. Maryland*, 380 U.S. 51, 58 (1965).

Furthermore, the prior restraint doctrine is inapplicable because the instant injunction is content neutral and allows petitioners ample alternative means to express their views near the clinic, as discussed above. *See also Alexander*, 113 S. Ct. at 2772-73 & n.2 (rejecting the "essentially limitless expansion of the term [prior restraint] that petitioner proposes"). Thus, far from involving a prior restraint, this case involves reasonable time, place and manner restrictions, imposed after the fact -- after petitioners had repeatedly turned opportunities for expression into acts of disruption.

F. The Injunction Provides Adequate Notice to Petitioners of the Conduct Prohibited.

A government restriction is vague if it "either forbids or requires the doing of an act in terms so vague that men of

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intimidation, harassment, and threats of violence, *see* Pet. App. A-23-24. *Carroll v. Presidents & Comm'rs of Princess Anne*, 393 U.S. 175 (1968), hinged on the fact that no notice of the injunction was provided to those enjoined; and *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), involved a local ordinance which was overbroad, and thus facially void.

common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926). The vagueness doctrine is based on due process principles that require fair notice and warning, and sufficient specificity to avoid arbitrary and discriminatory enforcement. *Smith v. Goguen*, 415 U.S. 566 (1974). "The normal standard of specificity required for an injunction is that 'the party enjoined must be able to ascertain from the four corners of the order precisely what acts' are forbidden." *In re Baldwin-United Corp.*, 770 F.2d 328, 339 (2d Cir. 1985). To the extent there is any doubt as to what the trial court intended, the injunction should be construed narrowly. *Ibid.*

In the Florida Supreme Court, petitioners challenged as vague the ban on "sounds or images observable to or within earshot of the patients inside the Clinic;" the ban on "physically approaching any person seeking the services of the Clinic" within 300 feet of the clinic, and the ban on demonstrating within 300 feet of the residences of clinic staff.[17]

The first ban is sufficiently specific to put petitioners on notice that loud noises during surgery and recovery would not be tolerated and signs could not be displayed from ladders above the clinic's fence in such a manner that patients were forced to observe them during surgery and recovery. Further specificity is not required. *See McMonagle*, 939 F.2d at 72 (upholding identical ban); *Portland Feminist Women's Health Center*, 859 F.2d at 685 (rejecting claim that injunction was impermissibly vague for failing to provide a specific decibel level for prohibited sounds; "Greater particularity, while it may be desirable, is not required under Rule 65(d).")

The second and third bans were fashioned to combat

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[17] To the extent petitioners now seek to challenge additional provisions as vague, this Court should not entertain such new assertions not raised below.

the specific abuses described above, and each provides reasonable notice of the behaviors that would not be tolerated. "Condemned to the use of words, we can never expect mathematical certainty from our language. The words of the [ban] are marked by 'flexibility and reasonable breadth, rather than meticulous specificity,' [and] . . . it is clear what the [ban] as a whole prohibits." *Grayned*, 408 U.S. at 110. *See Medlin*, 874 F.2d at 1091. "Those subject to [the] strictures [of the injunction] have adequate notice of what is required of them, and sufficient assurance of the direction enforcement will take." *Portland Feminist Women's Health Center*, 859 F.2d at 687.

III. THE INJUNCTION IS NARROWLY TAILORED TO PROTECT SIGNIFICANT STATE INTERESTS THREATENED BY THE CONDUCT OF PETITIONERS.

The Florida Supreme Court found that the instant injunction is necessary to protect several significant state interests: protecting the state and federal constitutional rights of all Florida citizens, which include a woman's freedom to seek lawful medical or counseling services in connection with pregnancy, ensuring public safety and order, promoting the free flow of traffic on public streets and sidewalks, and protecting the property rights of all Florida's citizens. Pet. App. A-15-16. As this Court has recognized, the state's interest in maintaining order and public safety includes not only the prevention of criminal acts, but also the state's interest in ensuring traffic and crowd control, keeping open public access to buildings providing public services, prevention of excessive noise levels, protection of property rights and the privacy of the home, and ensuring appropriate medical standards. *Bray v. Alexandria Women's Health Clinic*, 113 S. Ct. 753 (1993) (Kennedy, J., concurring); *Gregory v. Chicago*, 394 U.S. 111, 118 (1969) (Black, J. & Douglas, J.,

concurring). Each of the provisions in the injunction serves a state interest that this Court has recognized as significant.

The Florida Supreme Court also correctly found that the injunction was "no broader than necessary to restrain the unlawful conduct," Pet. App. A-11, and that each of the restrictions was necessary to counteract a specific danger to a significant state interest created by petitioners' actions since the September 30, 1992 permanent injunction. Pet. App. A-16-19. The injunction specifically protects petitioners' First Amendment rights, including their right to demonstrate near the clinic.

A. Each Prohibition of the Injunction Is No Broader Than Necessary to Protect The Significant State Interest At Stake.

1. Petitioners Concede The Prohibitions on Trespassing or Blocking Access Are Narrowly Tailored To Ensure Access to Public Services.

The injunction prohibits petitioners from entering the clinic property or blocking access to the clinic. J.A. 57. Petitioners concede the validity of these provisions, Pet. Br. at 27 n.19, 28-30, as indeed they must, there is no First Amendment right to trespass or block ingress and egress. *See Cameron*, 390 U.S. 611 (upholding law that prohibited picketing in front of a courthouse unreasonably interfering with free ingress or egress); *Cox*, 379 U.S. 559 (demonstrators may not cordon off street or entrance to a building allowing no one to pass who refused to listen to them). Consequently, paragraphs one and two of the injunction should be affirmed.

2. The 36-Foot Buffer Zone Is Narrowly Tailored to the Need for Traffic and Crowd Control.

The injunction prohibits petitioners from demonstrating within 36 feet of the clinic property on three sides. The buffer zone keeps petitioners off the street in front of the clinic (Dixie Way), out of the entrances to the clinic's two parking lots and away from their perimeter. The restriction expressly provides that petitioners may demonstrate up to five feet from the clinic property line on the fourth side and requests the city to create a crosswalk to assure petitioners' safety and ease of access to this area. J.A. 57-58.

As the trial court found, testimony during the three day evidentiary hearing conclusively established the heavy traffic conditions on Dixie Highway in front of the clinic, the high number of protestors near the clinic and the resultant danger of injury to pedestrians, and the risk that emergency vehicles would not be able to reach the clinic if Dixie Way or the clinic parking lots were blocked. J.A. 50-53, 55; *see* J.A. 236-317 (testimony of Captain Allgeyer). The state's interest in the orderly movement and control of such a situation is a "substantial consideration." *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981). *See also Cameron*, 390 U.S. at 611; *Planned Parenthood v. Project Jericho*, 52 Ohio St. 3d 56, 556 N.E.2d 157 (1990) (significant state interest in ensuring that trade and commerce, including the provision of medical services, are conducted unimpeded by breaches of peace and threats to safety of those engaged in or patronizing lawful business).

The buffer zone is consistent with similar remedies ordered by other lower courts in such situations. *See, e.g. Portland Feminist Women's Health Center*, 859 F.2d at 681 (upholding a over twelve foot "free zone"); *Thompson v. Police Dept. of New York*, 145 Misc. 2d 417, 546 N.Y.S. 2d 945 (1989) (upholding buffer zone in front of clinic entrance). The exact dimensions of such a buffer zone will, of course,

vary with the layout of the particular site, and with the particular dimensions of the problems of access and crowd control. There is no basis for this Court to second-guess the trial court's 36-foot line on three sides of the clinic. *See Burson v. Freeman*, 112 S. Ct. at 1857; *Portland Feminist Women's Health Center*, 859 F.2d at 686.

3. The Prohibitions on Noise That Disrupts Surgical Procedures and on Harassing Patients and Clinic Staff Ensure Safe Medical Procedures.

The injunction prohibits petitioners from making noise that can be heard in the clinic or presenting images visible from the clinic during surgery and recovery times as defined in the order. J.A. 59.

As the trial court found, the noise level created by the Rescue America demonstrations organized by petitioners was very high; it included amplified sound and persons standing on ladders shouting over the clinic fence. J.A. 52, 53. The trial court further found, based on Dr. Snydle's testimony, that many patients had high anxiety levels manifested by physical symptoms, that these symptoms were caused or exacerbated by the noise and signs of petitioners, and that the risks associated with surgical procedures performed by the clinic were increased when procedures were performed on patients with increased anxiety levels. J.A. 54. As the Florida Supreme Court noted, the prohibition on displaying "images observable" by patients in the clinic during surgery and recovery periods is clearly targeted at the display of signs from ladders above the clinic fence. Pet. App. A-21. These findings justified the measures enunciated in paragraph four of the injunction.

This Court has previously recognized that safeguarding patient health and maintaining medical standards are important government interests that can justify restrictions on expressive

conduct. *NLRB v. Baptist Hospital*, 442 U.S. 773 (1979). Legal abortions are no exception. *Roe v. Wade*, 410 U.S. 113 (1973). *See Lewis v. Pearson Foundation*, 908 F. 2d 318 (8th Cir. 1990) (state has significant interest in protecting access to legal abortion); *Portland Feminist Women's Health Center*, 859 F.2d 681 (9th Cir. 1988) (protecting rights of clinic and its patients to safe medical services are important interests); *see also Planned Parenthood v. Operation Rescue*, 406 Mass. 701, 550 N.E.2d 1361 (1990); *Bering v. Share*, 106 Wash. 2d 212, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050 (1987)

This Court has also recognized a state's significant interest in controlling disruptive sound levels, especially where, as here, there is a "captive audience," and the noise is preventing the smooth functioning of a public service. *See Grayned v. Rockford*, 408 U.S. 104 (ordinance that prohibited conduct tending to disrupt classwork upheld due to significant state interest in undisrupted school sessions); *Medlin v. Palmer*, 874 F.2d 1085 (protecting patients of hospitals and clinics from unwarranted intrusion of noise generated by pro-life activists are significant state interests); *See also Portland Feminist Women's Health Center*, 859 F.2d at 685; *Eanes v. State*, 318 Md. 436, 569 A.2d 604, *cert. denied*, 110 S. Ct. 3218 (1990).

The same evidence of increased patient anxiety and increased surgical risk and the same state interest in assuring proper medical care sustain the provisions of the injunction that prohibit petitioners from assaulting, threatening or harassing patients entering the clinic or from communicating with patients within 300 feet of the clinic unless invited to do so. J.A. 59-60. The trial court found that some patients were turned away from the clinic by the protestors, and that many of those who entered the clinic suffered from anxiety and hypertension. The delay and the anxiety so caused increased the risk of the surgical procedure. J.A. 54. The prohibitions on harassing patients in paragraphs five, seven, and eight of

the injunction specifically address these problems.

As the Florida Supreme Court correctly held, Florida citizens are entitled to unimpeded access to licensed medical facilities and to freedom from unwanted confrontations and communications when undergoing lawful medical treatment, particularly where the effect of such confrontations is to place the patient's health and safety in jeopardy. Pet. App. A-15-16, citing *Frisby v. Schultz*, 487 U.S. 474 (1988); *see Roe v. Wade*, 410 U.S. at 113 (safeguarding patient health and maintaining medical standards are important government interests).

The protections of the injunction that prohibit assaulting or threatening clinic staff, J.A. 60 (¶¶ 7,8), also, obviously, serve the same state interest in assuring medical care as well as protecting the rights of citizens to conduct their affairs free of physical harm and harassment or intimidation. "[A] physical assault is by no stretch of the imagination expressive conduct protected by the First Amendment." *Wisconsin v. Mitchell*, 113 S. Ct. at 2199.

4. The Prohibitions on Demonstrating In Front of Doctors' Homes or Harassing Their Families Protect Property and Privacy Rights.

The injunction prohibits petitioners from demonstrating within 300 feet of the homes of clinic staff or owners, blocking access to their homes, or assaulting or intimidating their families and guests.

There is little question that the state's interest in protecting the well-being, tranquility, and privacy of the home is "of the highest order in a free and civilized society." *Carey v. Brown*, 447 U.S. 455, 471 (1980). In *Frisby*, this Court observed that one important aspect of the notion of residential privacy is the protection of the unwilling listener: although individuals can simply avoid unwanted speech in many areas, "the home is different." 487 U.S. at 484, *see id.* at 486

(picketing at the home "intrude[s] upon the targeted" captive audience). Indeed, the home is "the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits . . . ." *Carey*, 447 U.S. at 471. *See Gregory v. Chicago*, 394 U.S. 111, 118 (1969) (the home is where people "can escape the hurly-burly of the outside business and political world . . . ."); Landwehr, Unfriendly Persuasion: Enjoining Residential Picketing, 43 Duke L.J. 148 (1993).

As the trial court found, and as shown at the evidentiary hearing, protestors organized by Operation Rescue blockaded Dr. Snydle in his hotel, demonstrated in front of the residences of other clinic staff, and harassed the minor children of clinic staff in their home. J.A. 53-54, 174-79, 490-524. These facts warranted the prohibitions of paragraph six of the injunction.

CONCLUSION

For the reasons stated above, the judgment of the Florida Supreme Court in this case should be affirmed.

Respectfully submitted,

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